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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ENRIQUE SANCHEZ-MARQUEZ, Defendant.	CRIM. CASE NO. 07CR2971-H DATE: December 3, 2007 TIME: 2:00 p.m. GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTIONS TO: (1) COMPEL DISCOVERY; AND (2) GRANT LEAVE TO FILE FURTHER MOTIONS.

COMES NOW, the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Luella M. Caldito, Assistant United States Attorney, hereby files its Response in Opposition to Defendant's above-referenced Motions. This Response is based upon the files and records of this case.

I

STATEMENT OF THE CASE

On October 30, 2007, a federal grand jury in the Southern District of California returned an Indictment charging ("Defendant") with Deported Alien Found in the United States, in violation of Title 8, United States Code, Section 1326. The Indictment further alleged that Defendant had been removed from the United States subsequent to November 12, 2003.

II

STATEMENT OF FACTS

A. THE INSTANT OFFENSE

On August 7, 2007, at approximately 7:40 p.m., Border Patrol Agent Evelyn Boresoff was performing linewatch duties in a location known as "Sony" and in the Imperial Beach area. Agent Boresoff saw two individuals running north through an empty dirt lot behind a convenience store. Earlier in the shift, a remote video surveillance system operator observed two males jumping the secondary fence in an area known as "Truck Lot." This area was west of Agent Boresoff's position and approximately 500 yards north of the United States/Mexico international border and a quarter mile west of the Otay Mesa Port of Entry. The two individuals were not found.

When Agent Boresoff arrived at the convenience store, she noticed that the two individuals appeared nervous and turned away as they saw her approach the convenience store. Agent Boresoff approached the two individuals and identified herself as a Border Patrol agent. Agent Boresoff conducted a field immigration interview. One individual claimed to be a citizen of Mexico with no immigration documents that would allow him to enter or remain in the United States. The other individual, defendant Sanchez-Marquez, spoke in English and claimed to be a United States citizen. However, when Agent Boresoff asked Defendant if he had any form of identification, he responded in the negative.

Agent Boresoff requested a records check on Defendant via her service radio. The records check was inconclusive. Consequently, Defendant was taken to Imperial Beach Border Patrol Station for further investigation. At the station, Defendant's fingerprints were entered into the Department of Homeland Security's processing system, which identified Defendant as a previously deported alien. Additionally, further records checks revealed Defendant's criminal and immigration history.

Defendant was arrested and at approximately 11:21 p.m., Defendant was advised of his Miranda rights. Defendant acknowledged and waived his rights. In a post-Miranda interview, Defendant admitted to being a citizen and national of Mexico without any immigration documents that would allow him to enter or remain in the United States. Defendant further stated that he was traveling to

Nevada to visit his mother.

B. DEFENDANT'S IMMIGRATION HISTORY

Defendant is a citizen of Mexico who was ordered deported by an Immigration Judge on or about May 13, 1997. Defendant was last removed from the United States to Mexico on August 3, 2007.

III

ARGUMENT

A. Motion to Compel Discovery and Preserve Evidence

The United States has and will continue to fully comply with its discovery obligations. To date, the United States has produced 34 pages of discovery to Defendant's counsel, along with a DVD recording of Defendant's post-arrest interview. Counsel believes that all discovery disputes can be resolved amicably and informally in this case. In view of the below-stated position of the United States concerning discovery, it is respectfully requested that no orders compelling specific discovery by the United States be made at this time. The Government has no objection to the preservation of evidence for a reasonable time period.

1. Brady Information

The United States is well aware of and will continue to perform its duty under Brady v. Maryland, 373 U.S. 83 (1963), and United States v. Agurs, 427 U.S. 97 (1976), to disclose exculpatory evidence within its possession that is material to the issue of guilt or punishment. Defendant, however, is not entitled to all evidence known or believed to exist which is, or may be, favorable to the accused, or which pertains to the credibility of the United States' case. As stated in United States v. Gardner, 611 F.2d 770 (9th Cir. 1980), it must be noted that "the prosecution does not have a constitutional duty to disclose every bit of information that might affect the jury's decision; it need only disclose information favorable to the defense that meets the appropriate standard of materiality." Id. at 774-775 (citation omitted).

The United States will turn over evidence within its possession which could be used to properly impeach a witness who has been called to testify.

Although the United States will provide conviction records, if any, which could be used to impeach a witness, the United States is under no obligation to turn over the criminal records of all witnesses. United States v. Taylor, 542 F.2d 1023, 1026 (8th Cir. 1976). When disclosing such information, disclosure need only extend to witnesses the United States intends to call in its case-in-chief. United States v. Gering, 716 F.2d 615, 621 (9th Cir. 1983); United States v. Angelini, 607 F.2d 1305, 1309 (9th Cir. 1979).

Finally, the United States will continue to comply with its obligations pursuant to United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991).

2. Any Proposed 404(b) Evidence

The United States will disclose, in advance of trial, the general nature of any "other bad acts" evidence that the United States intends to introduce at trial pursuant to Federal Rule of Evidence 404(b).

3. Request for Preservation of Evidence

As stated above, the United States will preserve all evidence to which the Defendants are entitled pursuant to the relevant discovery rules. The United States also has no opposition to a preservation order, should Defendant seek one from this Court.

4. Defendant's Statements

The United States recognizes its obligation under Federal Rules of Criminal Procedure ("Rules") 16(a)(1)(A) and 16(a)(1)(B) to provide to Defendant any written statements and the substance of Defendant's oral statements. The United States has produced all of Defendant's statements that are known to the undersigned Assistant U.S. Attorney at this time. If the United States discovers additional oral or written statements that require disclosure under the relevant Rules, such statements will be promptly provided to Defendant.

5. Tangible Objects

The United States has complied and will continue to comply with Rule 16(a)(1)(E) in allowing Defendant an opportunity, upon reasonable notice, to examine, inspect, and copy tangible objects that are within its possession, custody, or control, and that is either material to the preparation of Defendant's defense or is intended for use by the United States as evidence during its case-in-chief at trial, or was obtained from or belongs to Defendant. The United States, however, need not produce rebuttal evidence in advance of trial. See United States v. Givens, 767 F.2d 574, 584 (9th Cir. 1984).

The Government will allow defense counsel to inspect Defendant's A-file on a date mutually agreeable to both parties. Also, a copy of Defendant's deport tape will be produced in discovery upon receipt by Government counsel.

6. Expert Witnesses

The United States will comply with Rule 16(a)(1)(G) and provide Defendant with a written summary of any expert testimony that the United States intends to use during its case-in-chief at trial under Federal Rules of Evidence 702, 703 or 705.

7. Witness Addresses

The United States objects to this request as overbroad, unnecessary, and unsupported. Through discovery, Defendant has the names of the officers and agents involved in her arrest. In addition, the United States will provided Defendant with a list of witnesses it intends to call in its trial memorandum. The United States objects to the request for the name and address of witnesses who will not be called by the Government at trial as overbroad and irrelevant.

8. Jencks Act Material

The United States will comply with its discovery obligations under the Jencks Act, Title 18, United States Code, Section 3500, and as incorporated in Rule 26.2.

9. Informants and Cooperating Witnesses

At this time, the United States is not aware of any confidential informants or cooperating witnesses involved in this case. The Government must generally disclose the identity of informants where: (1) the informant is a material witness, and (2) the informant's testimony is crucial to the defense. Roviaro v. United States, 353 U.S. 53, 59 (1957). If there is a confidential informant involved in this case, the Court may, in some circumstances, be required to conduct an in camera inspection to determine whether disclosure of the informant's identity is required under Roviaro. See United States v. Ramirez-Rangel, 103 F.3d 1501, 1508 (9th Cir. 1997). If the United States determines that there is a confidential informant or cooperating witness who is a material witness with evidence helpful to the defense or essential to a fair determination in this case, the United States will either disclose the identity of the informant or submit the informant's identity to the Court for an in camera inspection.

10. Residual Request

The United States has complied with Defendant's residual request for prompt compliance with Defendant's discovery requests and will continue to do so.

B. Motion For Leave To File Additional Motions

The Government opposes this request unless the motion is based upon newly discovered evidence not available to Defendant at the time of the motion hearing.

IV

CONCLUSION

For the foregoing reasons, the United States requests that Defendant's Motions be denied where opposed.

DATED: November 26, 2007.

Respectfully Submitted,

KARAREN P. HEWITT
United States Attorney

/s/ Luella M. Caldito

LUELLA M. CALDITO
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ENRIQUE SANCHEZ-MARQUEZ, Defendant.	))))))))))	Case No. 07CR2971-H CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, LUELLA M. CALDITO, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO COMPEL DISCOVERY AND LEAVE TO FILE FURTHER MOTIONS on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Carey Gordon, Federal Defenders of San Diego, Inc.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 26, 2007

/s/ Luella M. Caldito
LUELLA M. CALDITO